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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

(A-489-805)

Certain Pasta from Turkey: Notice of Final Results of the 14th Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 29, 2011, the Department of Commerce (the Department) published the preliminary results of the 14th administrative review for the antidumping duty order on certain pasta from Turkey (pasta).\1\ The review covers one exporter: Marsan Gida Sanayi ve Ticaret A.S. (Marsan). The period of review (POR) is July 1, 2009, through June 30, 2010.

\1\ See Certain Pasta From Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review, 76 FR 23974 (April 29, 2011) (Preliminary Results).

As a result of our analysis of the comments received, the final results remain the same as the Preliminary Results. The Department continues to find that Marsan had no shipments to the United States during the POR for which it was the first party with knowledge of U.S. destination. Because "as entered" liquidation instructions do not alleviate the concerns which the May 6, 2003, "automatic assessment" clarification was intended to address,\2\ we continue to find it appropriate in this case to instruct Customs and Border Protection (CBP) to liquidate any existing entries of merchandise produced by Birlik and exported by Marsan at the rate applicable to Birlik, i.e., the all-others rate from the investigation of 51.49 percent. See Preliminary Results, 76 FR at 23977-78.

\2\ See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954, 23954 (May 6, 2003) (Assessment of Antidumping Duties).

EFFECTIVE DATE: (Insert date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3692.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 2011, the Department published the preliminary results of administrative review of the antidumping duty order on certain pasta from Turkey, and we invited parties to comment on the Preliminary Results. On May 27, 2011, Marsan submitted a case brief, and on June 9, 2011, petitioners\3\ submitted a rebuttal brief.\4\ On June 27, 2011, the Department held a public hearing.

\3\ New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company (collectively, petitioners).

\4\ On June 3, 2011, petitioners requested an extension until June 9, 2011, to file its rebuttal brief. On June 6, 2011, the Department granted the extension.

Scope of the Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions. Excluded from the

scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is also available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/ia/>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

We determine that an analysis of the comments received on the Preliminary Results do not warrant any changes in these final results. The Department clarified its "automatic assessment" regulation on May 6, 2003. As explained in the "automatic assessment" clarification, if, in the course of an administrative

review, the Department determines that the producer knew, or should have known, that the merchandise it sold to the reseller was destined for the United States, the reseller's merchandise will be liquidated at the producer's assessment rate which the Department calculates for the producer in the review.\5\ However, because Birlik, the producer, does not have its own rate, we will instruct CBP to liquidate entries at the "all-others" rate from the investigation of 51.49 percent, in accordance with the reseller policy.

\5\ See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (Assessment of Antidumping Duties). See also Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review, 75 FR 56989, 56989-56990 (September 17, 2010).

Duty Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department will issue appropriate appraisement instructions for the company subject to this review directly to CBP 15 days after the date of publication of these final results of review.

We determine that Marsan was not the first party in the transaction chain to have knowledge that the merchandise was destined for the United States, and thus Marsan is not considered the exporter of subject merchandise during the POR for purposes of this review. In accordance with the 1997 regulations concerning no shipment respondents, the Department's practice had been to rescind the administrative review.\6\ As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry. However, in our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through

resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding.\7\

\6\ See Antidumping Duties: Countervailing Duties, 62 FR 27296, 27393 (May 19, 1997).

\7\ See Assessment of Antidumping Duties.

The Department finds that Marsan had no shipments to the United States during the POR for which it was the first party with knowledge of U.S. destination. Because "as entered" liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Birlik and exported by Marsan at the rate applicable to Birlik.\8\ However, because Birlik does not have its own rate, we shall instruct CBP to liquidate entries at the "all-others" rate from the investigation of 51.49 percent,\9\ in accordance with the reseller policy.

\8\ See, e.g., Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review, 73 FR 77610, 77612 (December 19, 2008).

\9\ See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey, 61 FR 38545 (July 24, 1996).

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) for Marsan, and for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter (or its predecessor-in-interest) participated; (2) if

the exporter is not a firm covered in these reviews, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV conducted by the Department, the cash deposit rate will be 51.49 percent, the all-others rate established in the LTFV.\11\ These cash deposit requirements shall remain in effect until further notice.

\11\ See id.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

October 26, 2011
Date

APPENDIX I

List of Comments in the Issues and Decision Memorandum

Comment 1: Whether Marsan is affiliated with Birlik/Bellini

Comment 2: Whether the review covered Marsan and its affiliates

Comment 3: Whether the application of the reseller policy was unlawful

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